



Lobbying and Advocacy

A powerful tool available to non-profit organizations is lobbying and advocating for public policy decisions that will have a positive impact on the issues and communities they serve. Oftentimes, nonprofit managers believe lobbying is not an option for tax-exempt entities. However, tax-exempt organizations do have the right to lobby as long as the amount of time and money spent in lobbying activities is not a substantial part of the nonprofit's work.



For tax purposes, there is an important distinction between advocacy and lobbying. When nonprofit organizations advocate, they are trying to effect change as a way of moving forward in the work of their mission. There are many different forms of advocacy, all of which work to educate individuals, businesses, government and society about the issues and problems that need to be addressed in their community. Lobbying refers specifically to advocacy efforts that attempt to influence legislation. There are laws limiting the amount of lobbying that may be performed by nonprofit organizations, but there are no limits to the amount of time and money a nonprofit may spend on advocacy.

What is advocacy? Advocacy is educating in favor of a cause or idea. Through advocacy, organizations may involve themselves in issues of public policy without the activity being considered lobbying. Nonprofits may conduct educational meetings, prepare and distribute education materials or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.

What does advocacy look like? Advocacy is using social media to educate the public on a cause or issue. Advocacy is ed-

ucating a member of Congress about the effects of a policy on the community. Advocacy is using your organization to bring people together in understanding how an issue or policy affects the community and their lives.

What is lobbying? Lobbying refers specifically to activities that attempt to influence legislation. According to the IRS, legislation is any action by Congress, any state legislature, local council or similar governing body, with respect to acts, bills, resolution or similar items, or by the public in referendum, ballot, initiative, constitutional amendment or similar procedure. If an organization performs work that is in direct support of or opposition to a specific piece of legislation, the organization must treat that time and expense as lobbying.

What does lobbying look like? Lobbying is asking a member of Congress to vote for or against a specific piece of legislation or emailing members of your organization and urging them to contact their member of Congress. Lobbying is also the amount of time and money spent on preparing materials that will be used in support of these activities. For reporting purposes, it is important to track separately the time and money spent between direct lobbying and grassroots lobbying.

Direct lobbying is an attempt to influence new or existing legislation by communicating with a member of the legis-



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lative body or other government representative who has a say in the legislation. Asking your members to contact their legislators or government agencies is also direct lobbying.

Grassroots lobbying is asking the general public to contact their legislator or mobilizing the public around a legislative issue. For example, creating an online petition to generate public support for a cause, distributing flyers, or organizing a public rally for or against a piece of legislation are all grassroots lobbying activities.

Why must a nonprofit track lobbying expenses? The IRS allows nonprofits to participate in lobbying activities, provided the lobbying efforts are not a substantial part of the organization's activities. There are two ways to determine if lobbying efforts of the organization are large enough to be considered substantial: 1) using the Substantial Part Test on the Form 990 to determine the percentage of effort used for lobbying activities; or 2) making a 501(h) election with the IRS, which is electing to be measured by a clear expenditure test. Under both methods, an organization reports its lobbying expenses on [Schedule C](#) of the Form 990.

What is the Substantial Part Test? The Substantial Part Test analyzes an organization's lobbying activities as a percentage of its total activities. What is considered "substantial" depends on the facts and circumstances involved in the lobbying work.

Two important factors to consider are (1) the number of hours spent by employees and volunteers of the organization on lobbying activities, and (2) the amount of expenses. Total lobbying expenses should be tracked by type, such as media, mailings, publications, grants, rallies and demonstrations and direct contact with legislators. These expenses and hours are then reported on Schedule C, Part II-B. For this test, it is not necessary to breakout direct lobbying and grassroots lobbying expenses.

There is no specific percentage threshold that signals that the nonprofit has too many expenses attributed to lobbying and therefore must pay the excise tax on the excess amount. The IRS makes the determination based on the

types of lobbying expenses, the number of staff and volunteer hours reported and the total tax exempt expenses reported. The complexity of determining when lobbying activities are substantial is a key reason nonprofits engaging in lobbying activities should consider making the 501(h) lobbying election.

What is a 501(h) election? A 501(h) election is a hard line test for lobbying expenditures. On Schedule C, Part II-A, the organization reports total grassroots lobbying expenses and total direct lobbying expenses. These totals are compared to a threshold limit based on the organization's total tax exempt expenses. Lobbying expenses must fall under this threshold or an excise tax on the excess amount is paid. The threshold is clearly defined and as long as your organization tracks the lobbying expenses and keeps the total under this limit, your organization will not owe excise tax on these expenses.

Under this expenditure test, an organization that engages in excessive lobbying activity over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax. Should the organization exceed its lobbying expenditure dollar limit in a particular year, it must pay an excise tax equal to 25 percent of the excess.

What are the lobbying expenditure limits under the 501(h) election? The IRS specifies nontaxable lobbying limits in the following table. Grassroots lobbying is limited to 25% of the total lobbying nontaxable amount.



If total amount of exempt purpose expenditure is:	Lobbying nontaxable amount is:
Not over \$500,000	20% of the exempt purpose expenditures
Over \$500,00 but not over \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000
Over \$17,000,000	\$1,000,000

How does a nonprofit file a 501(h) election? A nonprofit makes the 501(h) election by filing [Form 5768](#). This is a one page form with the organization's contact information, electing year and signature of an officer or trustee of the organization. Form 5768 must be filed in the tax year in which the organization wants to use the election and the form must be mailed physically to the IRS; it cannot be e-filed. For example, if the organization wants to file Form 990 under the 501(h) election for tax year 2018, the form must be filed within tax year 2018. The election remains in effect for succeeding years unless it is revoked by the organization. To revoke a previous 501(h) election, an organization files another Form 5768 and revocation is effective beginning in the year following the year in which the revocation is filed.

Can a nonprofit participate in a political campaign? The simple answer is no. An organization cannot participate directly or indirectly in a political campaign on behalf of or in opposition to a political candidate and be a tax-exempt organization. The organization also must pay excise tax on amounts paid or incurred in participating in a political campaign. Due to the possibility of losing tax-exempt status or participating in a political campaign, it is best to avoid any work that might be considered campaigning.

The IRS considers an organization to be participating in a political campaign if:

- It participates or intervenes directly or indirectly in any political campaign on behalf of or in opposition to any candidate for public office.
- Its activities attempt to influence legislation by propaganda or otherwise.
- Its main objective is only attained by legislation or a defeat of proposed legislation and it advocates or campaigns for the attainment of this main objective.

For more information, here are some helpful links:

<https://www.irs.gov/charities-non-profits/lobbying>

<https://www.councilofnonprofits.org/everyday-advocacy>

